

AMENDED IN SENATE APRIL 1, 2004

SENATE BILL

No. 1516

Introduced by Senator Machado
(Principal coauthor: Assembly Member Matthews)

February 19, 2004

An act to amend Sections 3043, 3043.2, and 3043.25 of the Penal Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

SB 1516, as amended, Machado. Parole: hearings.

Existing law, added by initiative statute requiring a $\frac{2}{3}$ vote of each house for amendment, provides that the Board of Prison Terms must give notice of a parole suitability hearing for a prisoner, upon request, to a victim or next of kin if the victim has died. Under existing law, those people, or two members of the victim's immediate family, have the right to appear and express their views for consideration by the board in its decision on parole for the prisoner.

This bill would alternatively provide two representatives designated *for a particular hearing* by the victim or next of kin in writing prior to the hearing with the right to appear and express their views for consideration by the board in its decision on parole for the prisoner, except that any statement provided by a representative designated by the victim or next of kin would be limited to comments concerning the effect of the crime on the victim. *These designees would be limited to specified categories of persons, and would be permitted to appear only in the absence of the victim, next of kin, or immediate family members, as specified.*

Existing law provides that the board may permit the victim, next of kin, or immediate family members, in lieu of appearance, to file with

the board a written, audiotaped, ~~or~~ videotaped, *or similarly documented* sentencing or other statement expressing their views of the crime and the person responsible.

This bill would require the board to permit those statements from a victim, next of kin, or immediate family members in lieu of appearance, and would alternatively require the board to permit two representatives designated *for a particular hearing* by the victim or next of kin in writing prior to the hearing to file written, audiotaped, or videotaped statements. However, the statements of designated representatives would be limited to comments concerning the effect of the crime on the victim *and the designees would be limited to specified categories of persons*.

Existing law permits a victim, next of kin, or family member authorized to appear at a parole suitability hearings in person or through recorded statements, as provided above, to also appear by videoconferencing, where available.

This bill would extend this teleconferencing authorization to representatives designated *for a particular hearing* by the victim or next of kin in writing prior to the hearing.

Because it would amend the initiative measure, this bill requires a $\frac{2}{3}$ vote.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3043 of the Penal Code is amended to
2 read:

3 3043. (a) Upon request, notice of any hearing to review or
4 consider the parole suitability or the setting of a parole date for any
5 prisoner in a state prison shall be sent by the Board of Prison Terms
6 at least 30 days before the hearing to any victim of a crime
7 committed by the prisoner, or to the next of kin of the victim if the
8 victim has died. The requesting party shall keep the board apprised
9 of his or her current mailing address.

10 ~~The~~

11 (b) *The* victim, next of kin, two members of the victim's
12 immediate family, or two representatives designated *for a*
13 *particular hearing* by the victim or next of kin in writing prior to
14 the hearing have the right to appear, personally or by counsel, at

the hearing and to adequately and reasonably express his, her, or their views concerning the crime and the person responsible, except that any statement provided by a representative designated by the victim or next of kin shall be limited to comments concerning the effect of the crime on the victim. ~~The~~

(c) *A representative designated by the victim or the victim's next of kin for purposes of this section must be either that person's legal counsel or a family or household member of the victim. The board may not permit a representative designated by the victim or the victim's next of kin to attend a hearing, or to submit a statement to be included in the hearing as provided in Section 3043.2, if the victim, next of kin, or a member of the victim's immediate family is present at the hearing, or if the victim, next of kin, or a member of the victim's immediate family has submitted a statement as described in Section 3043.2.*

(d) *The board, in deciding whether to release the person on parole, shall consider the statements of victims, next of kin, immediate family members of the victim, and the designated ~~representative~~ representatives of the victim or next of kin, if applicable, made pursuant to this section and shall include in its report a statement of whether the person would pose a threat to public safety if released on parole.*

In those cases where there are more than two immediate family members of the victim who wish to attend any hearing covered in this section, the board may, in its discretion, allow attendance of additional immediate family members or limit attendance to the following order of preference: spouse, children, parents, siblings, grandchildren, and grandparents.

The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

~~SEC. 2.—Section 3043.2 of the Penal Code is amended to read:~~

~~3043.2. (a) In lieu of personal appearance at any hearing to review the parole suitability or the setting of a parole date, the Board of Prison Terms shall permit the victim, his or her next of kin, immediate family members, or two representatives designated by the victim or next of kin in writing prior to the hearing to file with the board a written, audiotaped, or videotaped~~

1 ~~statement expressing his or her views concerning the crime and the~~
2 ~~person responsible. The statement may be personal messages from~~
3 ~~the person to the board made at any time or may be a statement~~
4 ~~made pursuant to Section 1191.16, or a combination of both,~~
5 ~~except that any statement provided by a representative designated~~
6 ~~by the victim or next of kin shall be limited to comments~~
7 ~~concerning the effect of the crime on the victim. The board shall~~
8 ~~consider any statement filed prior to reaching a decision, and shall~~
9 ~~include in its report a statement of whether the person would pose~~
10 ~~a threat to public safety if released on parole.~~

11 ~~(b) Whenever an audio or video statement is filed with the~~
12 ~~board, a written transcript of the tape shall also be provided by the~~
13 ~~person filing the statement.~~

14 ~~(c) Nothing in this section shall be construed to prohibit the~~
15 ~~prosecutor from representing to the board the views of the victim,~~
16 ~~his or her immediate family members, or next of kin.~~

17 ~~(d) In the event the board permits an audio or video statement~~
18 ~~to be filed, the board shall not be responsible for providing any~~
19 ~~equipment or resources needed to assist the victim in preparing the~~
20 ~~statement.~~

21 *SEC. 2. Section 3043.2 of the Penal Code is amended to read:*

22 3043.2. (a) (1) In lieu of personal appearance at any hearing
23 to review the parole suitability or the setting of a parole date, the
24 Board of Prison Terms ~~may~~ *shall* permit the victim, his or her next
25 of kin, ~~or~~ immediate family members, ~~or two representatives~~
26 ~~designated for a particular hearing by the victim or next of kin in~~
27 ~~writing prior to the hearing to file with the board a written,~~
28 ~~audiotaped, or videotaped statement, or statement stored on a CD~~
29 ~~Rom, DVD, or any other recording medium accepted by a court~~
30 ~~pursuant to Section 1191.15 or by the board, expressing his or her~~
31 ~~views concerning the crime and the person responsible. The~~
32 ~~statement may be personal messages from the person to the board~~
33 ~~made at any time or may be a statement made pursuant to Section~~
34 ~~1191.16, or a combination of both, except that any statement~~
35 ~~provided by a representative designated by the victim or next of kin~~
36 ~~shall be limited to comments concerning the effect of the crime on~~
37 ~~the victim.~~

38 (2) *A representative designated by the victim or the victim's*
39 *next of kin for purposes of this section must be either that person's*
40 *legal counsel or a family or household member of the victim.*

1 (3) The board shall consider any statement filed prior to
2 reaching a decision, and shall include in its report a statement of
3 whether the person would pose a threat to public safety if released
4 on parole.

5 (b) Whenever an audio or video statement or a statement stored
6 on a CD Rom, DVD, or other medium is filed with the board, a
7 written transcript of the statement shall also be provided by the
8 person filing the statement.

9 (c) Nothing in this section shall be construed to prohibit the
10 prosecutor from representing to the board the views of the victim,
11 his or her immediate family members, or next of kin.

12 (d) In the event the board permits an audio or video statement
13 or statement stored on a CD Rom, DVD, or other medium to be
14 filed, the board shall not be responsible for providing any
15 equipment or resources needed to assist the victim in preparing the
16 statement.

17 SEC. 3. Section 3043.25 of the Penal Code is amended to
18 read:

19 3043.25. Any victim, next of kin, members of the victim's
20 immediate family, or representatives designated *for a particular*
21 *hearing* by the victim or next of kin in writing prior to the hearing
22 who have the right to appear at a hearing to review parole
23 suitability or the setting of a parole date, either personally as
24 provided in Section 3043, or by a written, audiotaped, or
25 videotaped statement as provided in Section 3043.2, and any
26 prosecutor who has the right to appear pursuant to Section 3041.7,
27 shall also have the right to appear by means of videoconferencing,
28 if videoconferencing is available at the hearing site. For the
29 purposes of this section, "videoconferencing" means the live
30 transmission of audio and video signals by any means from one
31 physical location to another.